

these authorities proved to be sufficiently in point to be of assistance in the construction of the bailee clause which it fell to their Lordships to consider in the present case.

For the reasons they have given, their Lordships dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Holman Fenwick & William; Mackenzie Mills.*

A SINGAPORE REPORTS

THE GREAT EASTERN LIFE ASSURANCE CO. LTD. v. NG HUI LIP

[C.A. (Wee Chong Jin C.J., Kulasekaram and Lai Kew Chai JJ.) April 17, 1984]

B

[Singapore — Civil Appeal No. 17 of 1983]

Landlord and Tenant — Rent-controlled premises — Intention to increase rent — Notice to quit — Whether tenant contractual tenant at new rent — Control of Rent Act (Cap.266), s.7.

C

In 1943 the appellants, the owners of No. 202 Orchard Road, Singapore (the premises) let the premises to one Teo Chwee Geok. The premises were rent-controlled. In February 1952 the appellants desired to increase the monthly rent. Accordingly they sent a notice to quit dated February 22, 1952 to the tenant.

D

Rajah J. held that a notice to quit under section 7 of the Control of Rent Act (Cap.266) (the Act) did not *ipso facto* operate to bring about a statutory tenancy within the meaning of the Act. The appellants appealed.

E

Held, dismissing the appeal: (1) the notice to quit determined the contractual tenancy and on April 1, 1952 Teo Chwee Geok became a statutory tenant;

F

(2) in the context of the appellants' object in sending the notice to quit, which was to obtain a lawful increased rent and not to recover possession of the premises, it is a reasonable inference that the appellants agreed to grant and Teo Chwee Geok agreed to accept a fresh contractual tenancy on the same terms as the original contractual tenancy except the monthly rent. It follows that Teo Chwee Geok was as from June 1, 1952 a contractual tenant of the premises.

G

[*Editorial Note:* The appellants were granted leave to appeal to the Judicial Committee of the Privy Council but later withdrew the appeal.]

Cases referred to:

H

- (1) *Shuter v. Hersh* [1922] 1 K.B. 438, 445.
- (2) *Davies v. Bristow* [1920] 3 K.B. 428, 438.
- (3) *The Great Eastern Life Assurance Co. Ltd. v. Goh Ah Kow* [1980] 1 M.L.J. 277.
- (4) *Teo Ee Hup v. Syed Hussain bin Abdul Rahman Alkaff & 2 Ors.* [1982] 2 M.L.J. 142.
- (5) *Chiang Yik Mun t/a Bunny Tailor v. CYC Shanghai Shirt Co. Pte. Ltd.* [1983] 1 M.L.J. 14.

HIGH COURT (May 4, 1983).

I

Kirpal Singh for the appellants.

Lim Joo Hock for the respondents.

Cur. Adv. Vult.

Rajah J.: This is an appeal by the plaintiff company (appellant) against a judgment of a learned District Judge whereby he dismissed the appellant's claim for recovery of the ground floor of the premises known as No. 202 Orchard Road and mesne profits. The Petition of Appeal was filed on April 28, 1980 and the appeal came on for hearing before me on April 2, 1982. Mr. Kirpal Singh appeared for the appellant and Mr. Lim Joo Hock for the respondent.

Sometime before this appeal came before me I had on October 25, 1979 in D.C.A. No. 2 of 1978 ([1980] 1 M.L.J. 277) and again on January 21, 1980 in D.C.A. No. 27 of 1980 ([1982] 2 M.L.J. 142) held that a notice to quit under section 7 of the Control of Rent Act (Cap. 266) (the Act) did not *ipso facto* operate to bring about a statutory tenancy within the meaning of the Act.

At this hearing counsel for the appellant applied for an adjournment on the basis that one of the points to be argued in the appeal before me — whether a notice to quit given under section 7 of the Control of Rent Act (Cap. 266) with the express purpose of increasing the controlled rent in respect of controlled premises operated *ipso facto* to create a statutory tenancy — was then under appeal before the Court of Appeal against my judgment in D.C.A. No. 27 of 1980. Counsel for the respondent not objecting, I granted the application.

The appeal against my judgment in D.C.A. 27 of 1980 was summarily dismissed by the Court of Appeal on September 14, 1982. The appeal came up for hearing for the second time on January 28, 1983. On this occasion Mr. Poh Guan Hock assisted by Mr. Kirpal Singh appeared for the appellant and Mr. Lim Joo Hock appeared, as before, for the respondent. Again an application was made for an adjournment by Mr. Poh, this time on the ground that the same point was again before the Court of Appeal in yet another District Court Appeal (D.C.A. No. 19 of 1981 ([1983] 1 M.L.J. 14)) and that if it was resolved by the Court of Appeal again in a manner that went against the interest of the appellant, the appeal would not be proceeded with. The application for adjournment was again granted.

On February 25, 1983 the Court of Appeal in D.C.A. No. 19 of 1981 summarily dismissed the appeal of Mr. Kirpal Singh's client. The appeal thereafter came up for hearing before me for the last time on March 4, 1983. This time Mr. Kirpal

Singh appeared alone for the appellant and, as before, Mr. Lim Joo Hock appeared for the respondent.

Even though the Court of Appeal had dismissed both the appeals in D.C.A. No. 27 of 1980 and D.C.A. No. 19 of 1981 Mr. Kirpal Singh proceeded with the appeal on the basis that the point resolved by the Court of Appeal did not really cover the only issue he was about to raise, namely, that the Notice to Quit dated February 22, 1952 (P. 102 of the Record of Appeal) operated to create a statutory tenancy. He cited two cases, namely, *Shuter v. Hersh*⁽¹⁾ and *Davies v. Bristow*⁽²⁾ based on the English Rent Restriction Acts. I found these cases not relevant to our Control of Rent Act. Relevant to this appeal are the following cases:-

- D (1) *The Great Eastern Life Assurance Co. Ltd. v. Goh Ah Kow t/a Singapore Dry Cleaners & Anor.*⁽³⁾;
- (2) *Teo Ee Hup v. Syed Hussain bin Abdul Rahman bin Shaikh Alkaff & 2 Ors.*⁽⁴⁾;
- (3) *Chiang Yik Mun t/a Bunney Tailor v. CYC Shanghai Shirt Co. Pte Ltd.*⁽⁵⁾

I dismissed the appeal with costs. The appellant company, as I thought it would, has appealed.

[The appellant company appealed against the above decision.]

COURT OF APPEAL.

Joe Grimberg (Kirpal Singh with him) for the appellants.

- G Tan Kok Quan (Lim Joo Hock with him) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgment of the Court): In 1943 the appellants, the owners of No. 202 Orchard Road, Singapore ("the premises") let the premises to one Teo Chwee Geok at the monthly rent of \$70/-. The premises are subject to the Control of Rent Act ("the Act"). In February 1952 they desired to increase the monthly rent to \$130/- from the then prevailing rent \$87.50 p.m.

In order to achieve their desired object, they had, by virtue of the provisions of the Act, to obtain an order from the Rent Conciliation Board and, as a necessary preliminary step, they had to determine the contractual tenancy according to law. Accordingly, they sent a notice to quit dated

February 22, 1952 to the tenant. The notice to quit was in the following terms:-

"To Teo Chwee Geok,
or Tenant of No. 202 Orchard Road
Singapore.

Dear Sir,

We hereby give you notice to quit and deliver up possession of the premises known as no. 202, Orchard Road, Singapore, which you hold as a monthly tenant, on the 31st day of March 1952, or at the expiration of the month of your tenancy which shall expire next after the end of one calendar month from the date of the service of the notice on you.

If you desire to remain in occupation of the said premises as from the 1st day of April 1952, we are prepared to grant you a new tenancy at a monthly rent of \$130.00 subject to the approval of the Rent Conciliation Board, Singapore. Should you agree please call at our office to signify your consent to such new rental.

Yours faithfully,
Estate & Trust Agencies
(1927) Ltd.
Signed
Manager"

On June 20, 1952 they obtained a consent order from the Rent Conciliation Board fixing the monthly rent of the premises not at \$130 but at \$120 as from June 1, 1952.

It is common ground that rent at \$120 per month was paid and accepted from June 1, 1952. It is also not in dispute that the notice to quit determined the contractual tenancy and that on April 1, 1952 Teo Chwee Geok became a statutory tenant and that the purpose of the notice to quit was to enable the appellants to obtain an increased rent lawfully. It is also, in our opinion, clear from the contents of the notice to quit that the appellants intended to grant to Teo Chwee Geok, a fresh contractual tenancy at the monthly rent of \$130/-, if approval was forthcoming from the Rent Conciliation Board.

The sole issue in this appeal is whether on the above facts Teo became from June 1, 1952 the contractual tenant of the premises at the monthly rent of \$120/-. If the answer is in the affirmative, it is also common ground that the respondent before us is protected by the Act, having lawfully become the sub-tenant of the appellants, and that the appellants' claim for possession of the premises occupied by the respondent must fail. In order to decide this issue, it is essential to determine the inference that should be drawn from the fact the

A order of the Rent Conciliation Board was a consent order. Plainly, it must be inferred that the appellants and Teo Chwee Geok had, when they appeared before the Board, agreed to the Board fixing the monthly rent of \$120/-. In the context of the appellants' object in sending the notice to quit, which was to obtain a lawful increased rent and not to recover possession of the premises, it is a reasonable inference that the appellants agreed to grant and Teo Chwee Geok agreed to accept a fresh contractual tenancy on the same terms as the original contractual tenancy except the monthly rent which would be \$120/- if so fixed by the Board.

It follows, in our opinion, that Teo Chwee Geok was as from June 1, 1952 a contractual tenant of the premises.

D The subsequent conduct of the appellants also supports the existence of a new contractual tenancy. The evidence was that from June 1, 1952 to December 1976, a period of 24 years, the appellants accepted payment of the monthly rents at the rate of \$120/- per month without any reservation that the rents received were in respect of a statutory tenancy and that in their notice to quit dated November 2, 1976 it was stated that Teo Chwee Geok held the premises "on a tenancy from (the appellants)."

F Accordingly, the appeal must be dismissed with costs.

Appeal dismissed.

G Solicitors: Kirpal Singh & Co.; Lim Joo Hock & Co.

H
TAN CHONG KENG v.
VINCENT LIM BAK KENG

[C.A. (Wee Chong Jin C.J., Sinnathuray & Thean JJ.)
January 10, 1986]

I [Singapore — Civil Appeal No. 46 of 1983]

Banking — Cheque — Conditional payment of debt — Cheque presented and dishonoured only after action commenced — Action dismissed.

Contract — Loan — Purchase of airline tickets by appellant — Tickets paid by respondent — Payment to